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UNITED STATES DISTRICT COURT

DISTRICT OF IDAHO

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POCATELLO DENTAL GROUP, P.C., an)
Idaho professional corporation,)

Plaintiff,)

vs.)

INTERDENT SERVICE CORPORATION,))
a Washington corporation,)

Defendant.)

INTERDENT SERVICE CORPORATION,))
a Washington corporation,)

Counterclaimant,)

vs.)

POCATELLO DENTAL Group, P.C., an)
Idaho professional corporation; DWIGHT)
G. ROMRIELL, individually; LARRY R.)
MISNER, JR., individually; PORTER)

Case No.: CV-03-450-E-LMB

LARRY R. MISNER, JR.'S ANSWER TO
COUNTERCLAIM AND
COUNTERCLAIM AND CROSSCLAIM

63

SUTTON, individually; ERNEST)
SUTTON, individually; GREGORY)
ROMRIELL, individually; ERROL)
ORMOND, individually; and ARNOLD)
GOODLIFFE, individually,)
)

Counterdefendants.)
)
)

LARRY R. MISNER, JR, individually,)
)

Counterclaimant,)
)

vs.)
)

INTERDENT SERVICE CORPORATION,))
a Washington corporation,)
)

Counterdefendant.)
)
)

LARRY R. MISNER, JR., individually,)
)

Crossclaimant,)
)

vs.)
)

POCATELLO DENTAL GROUP, P.C., an)
Idaho professional corporation,)
)

Crossdefendant.)

ANSWER

As and for an answer to INTERDENT SERVICE CORPORATION, a Washington corporation's counterclaim ("Counterclaimant"), LARRY R. MISNER, JR. ("Counterdefendant") pleads and alleges as follows.

1. With regard to paragraphs 2 and 3, Counterdefendant admits the allegations contained therein.

2. With regard to paragraph 4, 5, 6, 7, 8, 9 and 10, Counterdefendant admits the allegations contained therein.

3. With regard to paragraphs 11 and 12, Counterdefendant admits the allegations contained therein.

4. With regard to paragraph 13, Counterdefendant admits Counterclaimant is in the business of providing or arranging management services, facilities and equipment for dental practices, but denies each and every remaining allegation within said paragraph.

5. With regard to paragraph 14, Counterdefendant admits the allegations contained therein.

6. With regard to paragraph 15, Counterdefendant objects to the allegations contained therein as it contains a legal conclusion.

7. With regard to paragraph 16, Counterdefendant admits such language is contained in the Management Agreement and said document would be the best evidence of what it provided..

8. With regard to paragraph 17, Counterdefendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained therein and on that basis denies the allegations within said paragraph.

9. With regard to paragraph 18, Counterdefendant admits Counterclaimant has provided management services, facilities and equipment to the Group, but denies each and every remaining allegation within said paragraph.

10. With regard to paragraph 19, Counterdefendant objects to the allegations contained therein as it contains a legal conclusion.

11. With regard to paragraph 20, Counterdefendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained therein and on that basis denies the allegations within said paragraph.

12. With regard to paragraph 21, Counterdefendant admits that the Group provides dental services to patients through its employed dentists. The remaining allegations within said paragraph are vague and on that basis, Counterdefendant denies the remaining allegations within said paragraph.

13. With regard to paragraph 22, Counterdefendant admits said wording is contained in the Management Agreement and said document would be the best evidence of what it provided.

14. With regard to paragraph 23, the allegations contained therein are vague and on that basis Counterdefendant denies the allegations within said paragraph.

15. With regard to paragraph 24, Counterdefendant denies the allegations contained therein.

16. With regard to paragraph 25, Counterdefendant admits such language is contained in the Management Agreement and said document would be the best evidence of what it provided.

17. With regard to paragraph 26, Counterdefendant admits such language is contained in the Management Agreement and said document would be the best evidence of what it provided.

18. With regard to paragraph 27, Counterdefendant admits such language is contained in the Management Agreement and said document would be the best evidence of what it provided.

19. With regard to paragraph 28, Counterdefendant admits such language is contained in the Management Agreement and said document would be the best evidence of what it provided.

20. With regard to paragraph 29, the allegations contained therein are vague and on that basis Counterdefendant denies the allegations within said paragraph.

21. With regard to paragraph 30, Counterdefendant denies the allegations contained therein.

22. With regard to paragraph 31, Counterdefendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained therein and on that basis denies the allegations within said paragraph.

23. With regard to paragraph 32, Counterdefendant admits that if such language does exist in a document, said document would be the best evidence of what it provided.

24. With regard to paragraph 33, Counterdefendant admits the allegations contained therein.

25. With regard to paragraph 34, Counterdefendant admits the allegations contained therein.

26. With regard to paragraph 35, Counterdefendant admits the Group stated a claim in the Bankruptcy and the filed documents are the best evidence of the nature of those claims.

27. With regard to paragraph 36, Counterdefendant admits that an agreement with Dwight G. Romriell was pursued, but denies the remaining allegations contained therein.

28. With regard to paragraph 37, Counterdefendant admits that a stipulation was reached with ISC. Counterdefendant further admits that the Bankruptcy Court approved ISC's plan of

reorganization, including the stipulated dismissal. Counterdefendant denies the remaining allegations contained therein.

29. With regard to paragraph 38, Counterdefendant admits he executed the "2003 Employment Agreement" on behalf of the Group, but denies the remaining allegations contained therein.

30. With regard to paragraph 39, Counterdefendant denies the allegations contained therein.

31. With regard to paragraphs 40, 41, 42 and 43, Counterdefendant denies the allegations contained therein and further objects to the same as they contain legal conclusions.

32. With regard to paragraph 44, Counterdefendant objects to the allegations contained therein as it contains a legal conclusion.

33. With regard to paragraph 45, Counterdefendant admits conversations took place but denies the remaining allegations and conclusions contained therein.

34. With regard to paragraph 46, Counterdefendant admits a TRO was obtained but denies the remaining allegations contained therein.

35. With regard to paragraph 47, Counterdefendant admits he wrote a letter to Mr. Chhina.

36. With regard to paragraph 48, Counterdefendant admits he received a telephone call from Mr. Chhina.

37. With regard to paragraphs 49 and 50, Counterdefendant admits ISC was appropriately served with the TRO but denies the TRO has impaired ISC from doing anything that was in the best interest of patients, professionalism, or reasonable management.

38. With regard to paragraphs 51, 52, 53 and 54, Counterdefendant is unknowing if ISC has any good faith "information and belief" and accordingly denies the remaining allegations and conclusions contained therein.

39. With regard to paragraphs 55 and 56, Counterdefendant admits Romriell has his own independent dental practice in the Pocatello area.

40. With regard to paragraph 57, Counterdefendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained therein and on that basis denies the allegations within said paragraph.

41. With regard to paragraph 58, Counterdefendant denies knowledge of any improper acts or omissions by Romriell and denies submitting a misleading affidavit.

42. With regard to paragraph 59, Counterdefendant admits knowledge of the TRO's requirements but denies any misleading testimony. Counterdefendant lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained therein and on that basis denies the remaining allegations within said paragraph.

43. With regard to paragraph 60, Counterdefendant is unknowing if ISC has any good faith "information and belief," but admits the Group retained Wintersteen & Associates.

44. With regard to paragraphs 61, 62 and 63, Counterdefendant admits to the presence of such language in the Consulting Report and said document would be the best evidence of what it provided.

45. With regard to paragraph 64, Counterdefendant incorporates by reference his answers to paragraphs 1 through 63.

46. With regard to paragraphs 65 and 66, Counterdefendant denies the allegations contained therein.

47. With regard to paragraph 67, Counterdefendant incorporates by reference his answers to paragraphs 1 through 66.

48. With regard to paragraphs 68, 69 and 70, Counterdefendant denies the allegations contained therein as they contain legal conclusions.

49. With regard to paragraph 71, Counterdefendant incorporates by reference his answers to paragraphs 1 through 70.

50. With regard to paragraphs 72, 73 and 74, Counterdefendant admits Romriell has filed good faith complaints with the Idaho board of dentistry but denies the remaining allegations contained therein.

51. With regard to paragraph 75, Counterdefendant incorporates by reference his answers to paragraphs 1 through 74.

52. With regard to paragraphs 76, 77, 78, 79, 80, 81 and 82, Counterdefendant denies breaching any fiduciary relationship, if any, with ISC and accordingly denies the allegations and conclusions contained therein.

53. With regard to paragraph 83, Counterdefendant incorporates by reference his answers to paragraphs 1 through 82.

54. With regard to paragraphs 84, 85, 86, 87, 88 and 89, Counterdefendant admits knowledge of the management contract, but denies the remaining allegations contained therein and further objects to the same as they contain legal conclusions.

55. With regard to paragraph 90, Counterdefendant incorporates by reference his answers to paragraphs 1 through 89.

56. With regard to paragraphs 91, 92, 93, 94, 95, 96 and 97, Counterdefendant denies the allegations and conclusions contained therein and further objects to the same as they contain legal conclusions.

57. With regard to paragraph 98, Counterdefendant incorporates by reference his answers to paragraphs 1 through 97.

58. With regard to paragraphs 99 and 100, Counterdefendant denies the allegations contained therein and further objects to the same as they contain legal conclusions.

59. With regard to paragraph 101, Counterdefendant incorporates by reference his answers to paragraphs 1 through 100.

60. With regard to paragraphs 102, 103, 104 and 105, Counterdefendant admits ISC seeks Declaratory Judgment, but denies ISC is entitled to such and denies the remaining allegations and conclusions contained therein.

RESPONSE TO REQUEST FOR ATTORNEY FEES

Counterdefendant admits Counterclaimant has retained Steel Rives LLP to represent its interests in the prosecution of their counterclaim. Counterdefendant denies Counterclaimant is entitled to an award of attorney fees and expenses.

AFFIRMATIVE DEFENSES

Unless otherwise specified, Counterdefendant denies each and every allegation contained in Counterclaimants's counterclaim unless expressly and specifically admitted.

FIRST DEFENSE

Counterclaimant's counterclaim, and each and every allegation contained therein, fails to state a claim against Counterdefendant upon which relief can be granted.

SECOND DEFENSE

Counterclaimant has failed to mitigate its damages, if any.

THIRD DEFENSE

Counterclaimant's claims are barred by the doctrine of unclean hands.

FOURTH DEFENSE

Counterclaimant has waived, or is estopped from asserting all claims set forth in the Counterclaim.

FIFTH DEFENSE

The Counterclaimant's claim(s) are barred by the applicable statute of limitations.

SIXTH DEFENSE

This answering Counterdefendant alleges that the Counterclaimant's Complaint and the claims therein are barred by the doctrine of laches.

SEVENTH DEFENSE

The allegations in the Counterclaimant's Complaint pertaining to fraud are not plead with sufficient particularity and specificity and the claim is therefore barred.

EIGHTH DEFENSE

The foregoing defenses are applicable, where appropriate, to any and all of Counterclaimant's claims for relief. In asserting these defenses, this Defendant does not admit that it has the burden of proving the allegations or denials contained in the defenses, but, to the contrary, asserts that by reasons of the denials and/or by reason of relevant statutory and judicial authority,

the burden of proving the facts relevant to many of the defenses and/or the burden of proving the inverse to the allegations contained in many of the defenses is upon the Counterclaimant. Counterdefendant does not admit, in asserting any defense, any responsibility or liability, but, to the contrary, specifically denies any and all allegations of responsibility and liability in Counterclaimant's counterclaim.

NINTH DEFENSE

Counterdefendant has considered and believes that it may have additional defenses to Counterclaimant's counterclaims, but cannot at this time, consistent with Rule 11 of the Federal Rules of Civil Procedure, state with specificity those defenses. Accordingly, Counterdefendant reserves the right to supplement its Answer and add additional defenses as discovery in this case progresses.

WHEREFORE, Counterdefendant prays for judgment as follows:

1. That Counterclaimant's counterclaim be dismissed with Counterclaimant taking nothing thereunder;
2. That Counterdefendant be awarded its costs and attorney fees necessarily incurred in defending this action; and
3. For such other relief as the Court may deem just and proper.

COUNTERCLAIM

As and for its counterclaim (Counterclaim-Misner) against INTERDENT SERVICE CORPORATION, a Washington corporation, ("Counterdefendant-ISC"), LARRY R. MISNER, JR. ("Counterclaimant-Misner") pleads and alleges as follows:

1. Counterdefendant-ISC is, and at all times relevant was, a Washington corporation registered as a foreign corporation in the State of Idaho.

2. Counterclaimant-Misner is an individual who is practicing pediatric dentistry, and at all times relevant was, a resident of the State of Idaho.

3. Pocatello Dental Group, P.C. ("Group") is a professional services corporation doing business in Chubbuck, Idaho. Group has previously done business as Pocatello Dental Group, a partnership; Pocatello Dental Group, PLLC, a professional limited liability company; and Idaho Dental Group, P.A. a professional association.

4. On October 11, 1996, Idaho Dental Group, P.A. entered into a Dental Group Management Agreement ("Management Agreement") with GMS Dental Group Management, Inc. ("GMS Dental"), a wholly owned subsidiary of GMS Dental. A copy of this Management Agreement is attached to this Answer, Counterclaim and Cross-claim as **Exhibit A**.

5. Counterdefendant-ISC, claiming to be the legal successor of GMS, has attempted to justify its actions taken in connection with Group as authorized by the Management Agreement.

6. Counterclaimant-Misner is, and, at all times relevant, was a shareholder of Group.

7. Counterclaimant-Misner is, and at all times since October 11, 1996, has been an employee of Group pursuant to the Dentist's Employment Agreement ("Employment Agreement") attached to this Answer, Counterclaim and Cross-claim as **Exhibit B**.

8. Subject matter jurisdiction for this counterclaim is proper under 28 U.S.C. § 1332 and the amount in controversy between the parties exceeds \$75,000.

FIRST CAUSE OF ACTION
Declaratory Judgement

9. The allegations contained in Paragraphs 1 through 8 above are hereby incorporated by reference as if stated here individually.

10. In October of 1996, Counterclaimant-Misner believes he and the other shareholders of the Group were required to sign a Non-Compete Agreement with GMS in a form as attached to this Answer, Counterclaim and Cross-claim as **Exhibit C**.

11. Counterclaimant-Misner has now decided to leave his current employment with the Group due to Counterdefendant-ISC's past and ongoing interference with Counterclaimant-Misner's practice of dentistry resulting in breaches of both Counterclaimant-Misner's Employment Agreement and the Management Agreement between the Group and Counterdefendant-ISC.

12. Counterclaimant-Misner therefore seeks a declaration that:

(a) Counterdefendant-ISC has not legally acquired the rights of GMS under the terms of the Non-Compete Agreement;

(b) the Group and/or its Members pursuant to the Management Agreement with Counterdefendant-ISC and as shareholders of the legal successor of Idaho Dental Group, P.A. have sole authority regarding professional matters and therefore have authority to waive the enforcement of the Non-Compete Agreement between Counterdefendant-ISC and Counterclaimant-Misner;

(c) the Non-Compete Agreement if interpreted as allowing an out of state non-professional corporation, *i.e.*, Counterdefendant-ISC, to limit the practice of dentistry of Counterclaimant-Misner would violate the public policy of the State of Idaho and thereby be unenforceable;

(d) Counterdefendant-ISC's past and ongoing material breaches of the Management Agreement with Group would excuse any breach of the Non-Compete Agreement by Counterclaimant-Misner and

(e) enforcement of the Non-Compete Agreement against Counterclaimant-Misner would – under the facts and circumstances currently existing locally – violate the public policy of the State of Idaho.

SECOND CAUSE OF ACTION

Intentional Interference with Contract and/or Prospective Economic Advantage

13. The allegations contained in Paragraphs 1 through 13 above are hereby incorporated by reference as if stated here individually.

14. Counterdefendant-ISC acting through its employees on numerous occasions intentionally refused patients the right to obtain or continue to receive dental treatment from Counterclaimant-Misner as an employee of the Group.

15. Counterdefendant-ISC's actions in refusing patients access to Counterclaimant-Misner breached both the Management Agreement and the public policy of the State of Idaho which places dental treatment decisions solely in the hands of licensed dentists.

16. Furthermore, Counterdefendant-ISC's intentional actions in breach of the Management Agreement with the Group including, but, not limited to those actions alleged in

Paragraph 26 below, interfered with Counterclaimant-Misner's valid employment contract with the Group.

17. Counterclaimant-Misner had both a contract and valid economic expectancy in his professional relationship with those patients cancelled or refused access to Counterclaimant-Misner by Counterdefendant-ISC.

18. Counterclaimant-Misner had a valid contract and economic expectancy in his employment contract with the Group and Counterdefendant-ISC intentionally interfered with that valid contract and economic expectancy with the Group..

19. Counterdefendant-ISC knew of Counterclaimant-Misner's contract and valid economic expectancy at the time Counterclaimant-ISC intentionally interfered with Counterclaimant-Misner's relationship, either actual or prospective, with patients.

20. Counterclaimant-Misner suffered both immediate and future economic damages due to Counterdefendant-ISC's conduct in both cancelling or refusing to schedule his patients and in breaching the Management Agreement.

21. The wrongful conduct of Counterdefendant-ISC of cancelling patients some of which were receiving active treatment by Counterclaimant-Misner and breaching the terms of the Management Agreement constitute an extreme deviation from reasonable standards of conduct and was done with intention, malice, recklessness or gross negligence. Pursuant to I.C. § 6-1604, Counterclaimant-Misner reserves the right to amend this counterclaim to include a prayer for relief seeking punitive damages.

22. Counterclaimant-Misner has been required to retain legal counsel to pursue this action and is entitled to recover reasonable attorneys fees pursuant to I.C. § 12-121 together with his costs incurred in pursuing this action pursuant to Rule 54 of the Federal Rules of Civil Procedure.

THIRD CAUSE OF ACTION

Breach of Contract

23. The allegations contained in Paragraphs 1 through 22 above are hereby incorporated by reference as if stated here individually.

24. Counterclaimant-Misner was an intended beneficiary of the Management Agreement between Group, Counterclaimant-Misner's employer, and Counterdefendant-ISC. The Management Agreement is attached to this Answer, Counterclaim and Cross-claim as Exhibit A.

25. Counterclaimant-Misner suffered economic damages as a direct result of Counterdefendant-ISC's breach of the Management Agreement

26. Counterdefendant-ISC breached the Management Agreement proximately causing economic loss to Counterclaimant-Misner in numerous ways, including, but not limited to:

- a. interfering with Counterclaimant-Misner's patient-dentist relationship;
- b. failing to provide and maintain Counterclaimant-Misner with staff and equipment necessary to effectively practice dentistry;
- c. failing to provide an experienced office manager for Counterclaimant-Misner's practice;
- d. charging paid time off to Counterclaimant-Misner as direct wages;
- e. refusing to reimburse Counterclaimant-Misner for practice expenses including his payment of legal fees for the Group;

f. failing to pay Counterclaimant-Misner earned bonuses, and
g. diverting U.S. mail addressed to Counterclaimant-Misner and refusing to give Counterclaimant-Misner an accounting of the contents of that diverted mail.

REQUEST FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of civil Procedure, Counterclaimant-Misner requests a jury trial on all issues so triable.

WHEREFORE, Counterclaimant-Misner request entry of judgment against Counterdefendant-ISC as follows:

- A. Declaring the Non-Compete Agreement executed by Counterclaimant-Misner in 1996 unenforceable by Counterdefendant-ISC
- B. For all damages as may be just under the circumstances of this case;
- C. For reasonable attorney fees pursuant to I.C. § 12-121 and costs pursuant to Rule 54 of the Federal Rules of Civil Procedure, and
- D. For such other and further relief as this Court deems just and equitable under the circumstances.

CROSS-CLAIM

As and for its cross-claim against POCATELLO DENTAL GROUP P.C., an Idaho professional corporation, ("Crossdefendant"), LARRY R. MISNER, JR. ("Crossclaimant") pleads and alleges as follows:

- 1. Crossclaimant is an individual who is practicing pediatric dentistry, and at all times relevant was, a resident of the State of Idaho.

2. Crossdefendant is a professional services corporation doing business in Chubbuck, Idaho. Crossdefendant has previously done business as Pocatello Dental Group, a partnership; Pocatello Dental Group, PLLC, a professional limited liability company; and Idaho Dental Group, P.A. a professional association.

3. On October 11, 1996, Idaho Dental Group, P.A. entered into a Dental Group Management Agreement ("Management Agreement") with GMS Dental Group Management, Inc. ("GMS Dental"), a wholly owned subsidiary of GMS Dental. The Management Agreement is attached to this Answer, Counterclaim and Cross-claim as Exhibit A.

4. ISC, claiming to be the legal successor of GMS, has attempted to justify its actions taken in connection with Crossdefendant as authorized by the Management Agreement.

5. Crossclaimant is, and, at all times relevant, was a shareholder of Crossdefendant.

6. Crossclaimant is, and at all times since October 11, 1996, has been an employee of Crossdefendant pursuant to the Dentist's Employment Agreement ("Misner Employment Agreement") attached to this Answer, Counterclaim and Cross-claim as Exhibit B.

7. Subject matter jurisdiction for this cross-claim is supplemental to its jurisdiction over other claims asserted in this matter as this cross-claim forms part of the same case or controversy as those other claims and therefore subject matter jurisdiction proper under 28 U.S.C. § 1367. The amount in controversy between the parties exceeds \$75,000.

FIRST CAUSE OF ACTION

Declaratory Judgement

8. The allegations contained in Paragraphs 1 through 7 above are hereby incorporated by reference as if stated here individually.

10. In October of 1996, Crossclaimant signed the Employment Agreement with Idaho Dental Group, P.A., a predecessor of the Crossdefendant, which is attached to this Answer, Counterclaim and Cross-claim as Exhibit B.

11. Crossclaimant has now decided to leave his current employment with the Crossdefendant due to Crossdefendant's past and ongoing breach of the Employment Agreement including, but not limited to, Crossdefendant's interference with Crossclaimant's practice of dentistry.

12. Crossclaimant notified Crossdefendant of Crossclaimant's intent to leave the practice and not honor any non-compete provisions contained in the Employment Agreement both verbally and by letter dated October 28, 2003 and Crossdefendant has indicated to Crossclaimant that Crossdefendant would not attempt to enforce the non-compete provisions in the Employment Agreement against Crossclaimant.

13. Crossclaimant therefore seeks a declaration that:

(a) any restriction on Crossclaimant's right to practice dentistry allegedly arising out of the Employment Agreement is unenforceable due to Crossdefendant's breach of that Employment Agreement;

(b) enforcement of the non-compete provisions contained in the Employment Agreement against Crossclaimant would -- under the facts and circumstances currently existing locally -- violate the public policy of the State of Idaho, and

(c) Crossdefendant, by both its actions and inaction, has waived any legal right to enforce the non-compete provisions in the Employment Agreement.

SECOND CAUSE OF ACTION

Breach of Contract

14. The allegations contained in Paragraphs 1 through 14 above are hereby incorporated by reference as if stated here individually.

15. Crossdefendant contracted with Crossclaimant through the Employment Agreement executed in October 1996.

16. Crossdefendant has breached the Employment Agreement with Crossclaimant proximately causing economic loss to Crossclaimant in numerous ways, including, but not limited to:

- a. interfering with Crossclaimant's patient-dentist relationship;
- b. failing to provide and maintain Crossclaimant with staff and equipment necessary to effectively practice dentistry;
- c. failing to provide an experienced office manager to manage Crossclaimant's practice;
- d. charging paid time off to Crossclaimant as direct wages;
- e. refusing to reimburse Crossclaimant for practice expenses including his payment of legal fees for the Crossdefendant, and
- f. failing to pay Crossclaimant earned bonuses.

REQUEST FOR JURY TRIAL

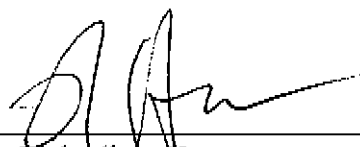
Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Crossclaimant requests a jury trial on all issues so triable.

WHEREFORE, Crossclaimant request entry of judgment against Crossdefendant as follows:

- A. Declaring the non-competition provisions contained in Crossclaimant's Employment Agreement unenforceable against Crossclaimant.
- B. For all damages as may be just under the circumstances of this case;
- C. For reasonable attorney fees pursuant to I.C. §§ 12-120 and 12-121 and costs pursuant to Rule 54 of the Federal Rules of Civil Procedure, and
- D. For such other and further relief as this Court deems just and equitable under the circumstances.

DATED this 10th day of February, 2004.

RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED

By 
Richard A. Hearn

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of February, 2004, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Gary L. Cooper
James P. Price
Ron Kerl
Cooper & Larsen, Chartered
P.O. Box 4229
Pocatello, ID 83205-4229

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☐ Overnight Mail
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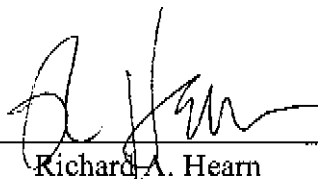
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RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED

By


Richard A. Hearn

DENTAL GROUP MANAGEMENT AGREEMENT

THIS DENTAL GROUP MANAGEMENT AGREEMENT (this "Agreement") is dated as of October 11, 1996 and is effective as of the date set forth in Section 6.1 ("Effective Date") by and between GMS DENTAL GROUP MANAGEMENT, INC., a Delaware corporation ("Manager") and wholly-owned subsidiary of GMS Dental Group, Inc., a Delaware corporation (the "Company") and IDAHO DENTAL GROUP, P.A., an Idaho professional corporation ("Group").

RECITALS

A. Group engages in the practice of dentistry by providing dental services to patients of Group ("Group Patients") and to enrollees ("Beneficiaries") of dental plans ("Plans") under contracts ("Payor Contracts") between Group and Plans or between Beneficiaries and Plans.

B. Group provides dental services to Beneficiaries and to Group Patients through arrangements with licensed individuals ("Providers"). Such arrangements may include contracts ("Employment Agreements") with dentist employees (collectively "Employee Providers") and agreements ("Provider Subcontracts") with independent contractor dentists and non-dentist providers of various dental care services (collectively "Subcontract Providers").

C. All activities of Group subject to this Agreement are referenced as the "Practice." All references to "dental" care and services include general and specialist dental services. All references to "dentists" include generalists and specialists.

D. Manager is a management services company that has been organized to provide certain support services for the Practice and for other dental groups. Manager is in the business of providing or arranging for management services, facilities, equipment and certain personnel necessary for the operation of the Practice.

E. Group desires to retain Manager on an independent contractor basis to provide management services that are more particularly described below, and Manager desires to provide such management services under the terms and conditions set forth in this Agreement.

AGREEMENTS

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, Manager and Group agree as follows:

ARTICLE 1

DEFINITIONS

Terms that are capitalized within this Agreement and its addenda and exhibits are defined in Addendum 1.

ARTICLE 2

SCOPE OF AGREEMENT

2.1 General Scope of Agreement. This Agreement shall apply to the Practice, including, without limitation, all professional, administrative and technical services; marketing, contracting, case management, ancillary dental services, outpatient services and dental care facilities, equipment, supplies and items, except as otherwise specifically provided in this Agreement. Group's Employment Agreements shall encompass substantially all such activities of Employee Providers and shall provide that all revenues derived from such activities (and not excluded below) are Revenues. Nothing in this Agreement shall be construed to alter or in any way affect the legal, ethical and professional relationship between and among Provider and Provider's patients, nor shall anything contained in this Agreement abrogate any right or obligation arising out of or applicable to the dentist-patient relationship.

2.2 License. Group grants Manager an exclusive license to use any and all of Group's assets, whether tangible or intangible, in carrying out Manager's duties and responsibilities under the provisions of this Agreement.

2.3 Intellectual Property. To the extent not assigned pursuant to Section 2.6 Group hereby grants to Manager a non-exclusive, perpetual, royalty-free, worldwide license to use and sublicense the use of any intellectual property owned by Group. This license shall cover, but not be limited to, use of the following:

(a) Service Mark. Group hereby grants Manager the right to use all service marks and trademarks of Group (the "Marks") for marketing and promotional materials in connection with Group's offering of dental services. Manager agrees to use the Marks solely in the design format used by Group as of the date of this Agreement or another design format approved in advance in writing by Group. Group shall have the opportunity to review any marketing or other materials using the Marks in advance of any public distribution. Manager agrees that it will include these restrictions on use in any sublicense of the Marks.

(b) Copyrighted Materials. Group hereby grants Manager the right to use any and all copyrighted materials authored or owned by Group including, specifically, the Group dental management

system software programs (the "Programs"). This license includes the right to sublicense the Programs and the right to prepare and own derivative works based on the Programs, all without a duty of accounting to Group. Group shall execute all documents required to enable Manager to own, use and exploit all such rights.

2.4 Revenues. "Revenues" shall mean all of Group's accounts receivable (net of contractual adjustments and bad debt), and cash collections. Revenues shall include all funds collected by, or legally due to, Group or any Affiliate of Group, including, without limitation, the following: (a) all fee-for-service payments for services to Group Patients or Beneficiaries; (b) all payments established under Payor Contracts; (c) all coordination of benefits or deductibles and third-party liability recoveries related to the Group's services; (d) all payments, dues, fees or other compensation to Group, (e) any income, profits, dividends, distributions or other payments from Group's investments; and (f) any interest or other non-operating income of Group.

2.5 Deposit Accounts. All cash received by Group from whatever source shall be deposited into an account or accounts ("Accounts") in the name of Group at a banking institution selected by Group and approved by Manager. Group authorizes Manager to bill and collect, in Group's name, all charges and reimbursements for Group's dental related activities and to deposit such collections in the Accounts. Group agrees to assist and cooperate with Manager in the billing and collection process and to immediately deliver to Manager for deposit any monies Group may receive.

2.6 Assignment.

(a) Assets. Except for the Dental Practice Assets and except as prohibited by contract or by law, Group hereby assigns, sells, conveys, transfers, and delivers to Manager, and Manager hereby accepts from Group, all of the assets and properties of Group of every kind, character and description, whether tangible, intangible, real, personal, or mixed, and wherever located, including, but not limited to, all Revenues, cash, accounts receivable, advances, prepaid expenses, deposits, equipment and improvements. The assets shall be valued at their fair market value which has been determined to be their respective book values. Manager shall have the authority, and Group shall execute any and all documents as may be necessary or appropriate to transfer the assets to Manager, authorize Manager to transfer the funds in the Accounts to a separate account in the name of Manager, and effectuate the intention of this provision.

(b) Liabilities. Manager shall be responsible for paying all claims and obligations associated with the operation of Group pursuant to this Agreement; provided, Manager shall be deemed to discharge fully its responsibility to Group for the liabilities described in this subparagraph by its timely payment on Group's behalf of, or delivery to Group of an amount sufficient to

discharge, all of Group's obligations and liabilities now existing or arising in the future, including those under Provider Subcontracts, Employment Agreements, Group's professional liability insurance and any other operational expenses for which Group retains responsibility or that are delegated to Group, whether pursuant to this Agreement or any other agreement of the parties or action of the Joint Operations Committee ("Group Expenses"). Notwithstanding the foregoing, Manager does not assume any liabilities of Group which are unrelated to the Practice or any liabilities for income taxes.

ARTICLE 3

GOVERNANCE AND CONTROL

3.1 Appointment. Group hereby appoints Manager as its sole and exclusive manager for the operation of the Practice and covenants not to enter into an agreement with any Person other than Manager to perform or assume any of Manager's rights, duties or responsibilities as provided herein. Manager hereby accepts full responsibility for such management as more fully set forth herein.

3.2 Professional Matters. Pursuant to applicable laws and requirements governing the practice of dentistry, Group shall retain ultimate responsibility for all activities of Group that are within the scope of a dentist's licensure and cannot be performed by Manager due to Manager's non-licensed status.

3.3 Relationship of Parties. In the performance of its duties and obligations under this Agreement, it is understood and agreed that Manager shall, at all times, be acting and performing as an independent contractor and not as an employee of Group. Except as provided in this Agreement or as required by law, Group shall neither have nor exercise any control or direction over the methods by which Manager shall perform its obligation thereunder; nor shall Manager have or exercise any control or direction over the methods by which Group shall practice dentistry. It is expressly agreed by the parties that no work, act, commission or omission of Manager pursuant to the terms and conditions of this Agreement shall be construed to make or render Manager or Manager's employees or agents, the employees of Group. Manager and Group are not partners or joint venturers with each other and nothing herein shall be construed so as to make them partners or joint venturers or impose upon either of them any liability as partners or joint venturers. Group's responsibility is to assure that the services covered by this Agreement shall be performed and rendered in a competent, efficient and satisfactory manner.

3.4 Authority and Control. Strategic planning, overall direction and control of the business and affairs of Group, and authority over the day-to-day activities of Group shall be accomplished as follows:

(a) Exclusive Authority.

(1) Group. Group shall have the sole responsibility and authority for all aspects of the practice of dentistry and delivery of dental services by Providers. Group shall consult with Manager or the Joint Operations Committee to the extent reasonable and not inconsistent with the licensure of dentists.

(2) Manager. Manager shall have the sole responsibility and authority for decisions related to the administration of the Practice, including without limitation those responsibilities listed in Article 4.

(b) Joint Authority. All other decision-making authority related to the business and affairs of Group shall be vested in a joint operations committee (the "Joint Operations Committee"). Nothing herein shall be construed as preventing the Joint Operations Committee from appointing representatives and delegating authority to such representatives so long as the Joint Operations Committee may revoke such appointment and delegation at any time and so long as the Joint Operations Committee retains ultimate responsibility for the decisions of such representatives.

3.5 Joint Operations Committee. Strategic planning, overall direction and control of the business and affairs of Group, and authority over the day-to-day activities of Group shall be overseen by the Joint Operations Committee as follows:

(a) Joint Operations Committee Membership. The Joint Operations Committee shall consist initially of five (5) individuals (the "Committee Members"). Group shall designate two (2) Committee Members who shall be licensed dentists (the "Group Members") and the remaining three (3) Committee Members (the "Manager Members") shall be appointed by Manager. The number of Committee Members may be increased by agreement of the parties. Each party shall continue to direct the appointment of the same percentage of Committee Members as described above. Each Committee Member shall serve at the pleasure of the party designating such Committee Member and may be replaced, with or without cause, at any time by such party upon the delivery of written notice thereof to the other Committee Members. Manager, Group and their respective Committee Members shall diligently pursue any preliminary activities that are necessary to allow the Joint Operations Committee to take an action. Where Committee Members are required to consult with the organization appointing such Committee Members, the Committee shall establish and agree on a deadline for accomplishing such consultation.

(b) Joint Operations Committee Action.

(1) Joint Action. Except as otherwise expressly set forth above, the Joint Operations Committee shall take all other actions that have been approved by a majority of the Committee Members.

(2) Consultation Forum. Consultation between Group and Manager, if any, shall take place at a meeting of the Joint Operations Committee, and Group and Manager hereby agree to be bound by the decision of their Group Members or Manager Members, as the case may be.

(c) Joint Operations Committee Meetings. Meetings of the Joint Operations Committee may be held by telephone or similar communications equipment so long as all Committee Members participating in a meeting can hear and speak to each other. The Joint Operations Committee shall prepare and maintain written minutes of all meetings and shall provide a copy of the minutes to the parties within fifteen (15) business days following each meeting.

(1) Regular Meetings. The Joint Operations Committee shall hold not less than four (4) regular meetings each year, at such specific times and places as the Committee Members may determine.

(2) Special Meetings. A special meeting of the Joint Operations Committee may be called by a majority of the Committee Members.

(3) Notice Requirement. A Committee Member calling a special meeting must provide all other Committee Members with ten (10) days' advance written or telephonic notice. Notice must be given or sent to the Committee Member's address or telephone number as shown on the records of the Joint Operations Committee. Notice may be delivered directly to each Committee Member or to a person at the Committee Member's principal place of business who reasonably would be expected to communicate that notice promptly to the Committee Member.

(4) Waiver of Notice Requirement.

(A) Written Waiver, Consent or Approval. Notice of a special meeting need not be given to any Committee Member who, either before or after the meeting, signs a waiver of notice or a written consent to the holding of the special meeting, or an approval of the minutes of the special meeting. Such waiver, consent or approval need not specify the purpose of the special meeting. All such waivers, consents, and approvals shall be filed with the Joint Operations Committee records or made a part of the minutes of the special meetings.

(B) Failure to Object. Notice of a special meeting need not be given to any Committee Member who attends the special meeting and does not protest before or at the commencement of the special meeting such lack of notice.

(5) Quorum. The smallest number of Committee Members that exceed fifty percent (50%) of all Committee Members shall constitute a quorum of the Joint Operations Committee, provided,

however, that such quorum shall include at least one Group Member and one Manager Member.

(6) Proxies. The Joint Operations Committee shall provide for the use of proxies, telephonic conference calls, written consents or other appropriate methods by which the full participation of the Group Members and Manager Members can be assured.

(d) Limitation of Responsibility. Notwithstanding any other provisions hereof, Committee Members shall be liable to the parties only for actions constituting bad faith, gross negligence or breach of an express provision of this Agreement (so long as such breach remains uncured after ten (10) days of receiving notice of the nature of such breach). In all other respects, Committee Members shall not be liable for negligence or mistakes of judgment.

3.6 Budgets. A capital and operating budget ("Annual Budget") shall be established regarding all financial aspects of the Practice. The Annual Budget shall include the following elements and other items, as appropriate:

(a) A capital expenditure budget outlining a program of capital expenditures, if any, that are required for the next succeeding fiscal year;

(b) An operating budget setting forth an estimate of Revenues and expenses for the next succeeding fiscal year, together with an explanation of anticipated changes or modifications, if any, in the Practice's utilization, rates, charges to patients or third party payors, salaries, costs of Providers, non-wage cost increases, and all other similar factors expected to differ significantly from those prevailing during the current fiscal year;

(c) Other expenses of operation;

(d) The amount of a reasonable reserve to satisfy possible shortfalls from operations. The allocation of such reserve shall be made by the Joint Operations Committee as and when necessary; and

(e) The Management Fee, as defined below, for the next succeeding fiscal year.

3.7 Budget Process.

(a) Initial Annual Budget. Not later than 45 days after the Effective Date, the Joint Operations Committee will have prepared the initial Annual Budget for the first fiscal year (which shall initially be the calendar year) during the term of this Agreement. If the Effective Date is other than the first day of a fiscal year, then such initial Annual Budget shall encompass only such

portion of the then current fiscal year as remains, or, at the option of the parties, such portion of the then current fiscal year plus the immediately subsequent fiscal year.

(b) Preliminary Budget. Not later than forty-five (45) days prior to the end of each fiscal year during the term of this Agreement, the Manager shall prepare and deliver to the Joint Operations Committee a preliminary Annual Budget for the next succeeding fiscal year ("Preliminary Budget").

(c) Joint Operations Committee Approval. The Joint Operations Committee shall review and suggest modifications to the Preliminary Budget within ten (10) days of receipt. Manager shall prepare a revised budget based upon the Joint Operations Committee's recommendations and the Preliminary Budget as revised shall become the Annual Budget.

(d) Adjustments. In the event of a material deviation between financial forecasts and financial performance during a fiscal year, Manager or Group may propose adjustments to the Annual Budget which adjustments shall be approved or disapproved pursuant to the procedures set forth above.

3.8 Personnel.

(a) Providers. Except in unusual circumstances approved by the Joint Operations Committee, Manager shall not employ or contract with any Providers for the provision of dental services. All Providers who provide dental services to Group Patients or to Beneficiaries shall be either (1) Employee Providers, (2) Subcontract Providers or (3) employees of Subcontract Providers.

(b) Non-Providers. With the exception of employees of Subcontract Providers, Manager shall employ all non-Provider personnel necessary for the operation of the Practice.

(c) Salary and Benefits. Subject to Manager's responsibilities under Section 2.5(b), each party to this Agreement shall remain liable for the salary and benefits paid to such party's own employees and shall be ultimately responsible for compliance with state and federal laws pertaining to employment taxes, workers' compensation, unemployment compensation and other employment-related statutes pertaining to the party's own employees.

(d) Payments to Subcontract Providers. Subject to Manager's responsibilities under Section 2.6(b), Group shall be liable for any payments due Subcontract Providers under Provider Subcontracts after receipt of funds from Manager.

EXHIBIT "A"

ARTICLE 4

MANAGEMENT SERVICES

4.1 General Description of Services. Within the limitations set out elsewhere in this Agreement, Manager shall provide or arrange for the provision to Group of all support services reasonably necessary and appropriate for the efficient operation of the Practice. Such services include all administrative services necessary to Group's performance of its obligations under Payor Contracts, contracting, marketing, capital formation and assistance with long term strategic planning. Manager shall exercise its best efforts to fulfill the administrative functions of a well managed dental group and to maintain the Practice's status as the preeminent group practice in Pocatello and the surrounding area.

4.2 Facilities. When appropriate, Manager shall secure and maintain facilities, including, without limitation, office space, improvements, furnishings, equipment, supplies and personal property, of a nature and in a condition necessary and appropriate for the efficient and effective operations of the Practice subject to the general approval of the Joint Operations Committee. Manager shall secure and maintain said facilities in the name of Group. Group hereby accepts and approves of the facilities initially provided by Manager. However, Manager from time to time shall make such facilities changes, including but not limited to dental equipment purchases, as reasonably may be requested by Group so that Group may conduct its practice according to the level required to maintain the practice's status as the preeminent group practice in Pocatello and the surrounding area.

4.3 Purchased Items and Services. Manager shall serve as the purchasing agent for Group and shall arrange for personnel benefits, insurance, and any other items and services required for the proper operation of the Practice.

4.4 Manager Personnel.

(a) Management Team. Subject to any approval or consulting rights of the Joint Operations Committee, Manager shall engage or designate one or more individuals experienced in dental group management and direction, including, but not limited to, an administrator, who will be responsible for the overall administration of the Practice including day-to-day operations and strategic development activities.

(b) Other Manager Personnel. Manager shall select, hire, train, supervise, monitor and terminate all non-Provider personnel necessary for the operation and management of the Practice; provided, however, with respect to the selection, hiring and termination of non-Provider clinical staff, Manager shall obtain the consent of the Group, which consent will not be unreasonably withheld.

4.5 Day-to-Day Management and Supervision. Subject to any approval or consulting rights of the Joint Operations Committee, Manager shall provide general management including, but not limited to, day-to-day supervision of:

- (a) Manager personnel;
- (b) Equipment and supply acquisition;
- (c) Office space and facility maintenance;
- (d) Patient records organization and retention;
- (e) Third party payor contracting;
- (f) Case management;
- (g) Billing, collections and accounting activities as set forth below;
- (h) All operating aspects and policies of the Practice including, but not limited to, hours of operation, work schedules, standard duties and job descriptions, for all nondentist personnel; and
- (i) Other related and incidental matters.

4.6 Billing and Collection Payment of Expenses. In addition to the responsibilities of Manager under Section 2.6(b), Manager shall be responsible for all billing and collecting activities required by Group. Manager shall also be responsible for reviewing and paying accounts payable of Group. Group hereby appoints the Manager its true and lawful attorney-in-fact to take the following actions for and on behalf of and in the name of Group:

(a) Bill and collect in Group's name or the name of the individual practicing dentist, all charges and reimbursements for Group. Group shall give Manager all necessary access to Patient records to accomplish all billing and collection. In so doing, Manager will use its best efforts but does not guarantee any specific level of collections, and Manager will comply with Group's reasonable and lawful policies regarding courtesy discounts;

(b) Take possession of and endorse in the name of Group any and all instruments received as payment of accounts receivable;

(c) Deposit all such collections directly into Accounts and make withdrawals from such Accounts in accordance with this Agreement; and

(d) Place accounts for collection, settle and compromise claims, and institute legal action for the recovery of accounts.

4.7 Bookkeeping and Accounting. Manager shall provide bookkeeping services, financial reports, and shall implement and manage a computerized management information system appropriate for the Practice.

(a) Financial Reporting. Manager shall prepare, analyze, and deliver to the Joint Operations Committee financial reports to the extent necessary or appropriate for the operation of the Practice, including the following:

(1) Financial statements, including balance sheets and statements of cash flow and income;

(2) Accounts payable and accounts receivable analysis;

(3) Billing status including any Medicaid remittances; and

(4) Reconciliation of assets, liabilities and major expenses.

(b). Audits. Group shall have the right to review and, at its sole cost and expense, obtain an audit (separate from any annual audit or review of Group's financial statements performed at the direction of the Manager) of Group's financial books and records maintained by the Manager. Upon five (5) days' prior written notice, Manager shall allow Group access during reasonable business hours to all information and documents reasonably required for such review or audit. Upon Group's request and at Group's expense, Manager shall also provide copies of such documents.

4.8 Marketing and Public Relations Services. Subject to Group's consent, which consent shall not be unreasonably withheld, Manager shall provide such marketing and public relations services as Manager determines reasonably necessary to promote, market and develop the dental services of Group. Manager shall provide Group with marketing materials and activities.

4.9 Group Agreements. Subject to Group's consent, which consent shall not be unreasonably withheld, on behalf of Group, Manager shall review, evaluate and negotiate Payor Contracts and Provider Subcontracts and any other contracts or agreements regarding the provision of dental related items or services by Group or Providers.

4.10 Utilization Review Quality Improvement and Outcomes Monitoring. Manager shall be responsible for providing administrative support for Group's utilization review, quality improvement and outcomes monitoring activities, including, without limitation, data collection, analysis and reporting for Group Patients and Beneficiaries. Manager shall also support the development and implementation of relevant policies, procedures,

protocols, practice guidelines and other interventions based on such activities.

4.11 Applicable Law. Manager and Group shall comply with all applicable federal and state laws, statutes, rules and regulations, including without limitation, those relating to Medicaid reimbursement and any other applicable governmental rules or the guidelines governing the standards for administering a professional dental practice.

ARTICLE 5

GROUP SERVICES

5.1 Provision of Dental Services by Group. Group shall operate the Practice during the Term as a dental practice in accordance with terms of this Agreement and the Annual Budget.

5.2 Providers.

(a) Professional Dental Services. Group shall employ or contract with the number of Providers Group deems necessary for the efficient and effective operation of the Practice and in accordance with quality assurance, credentialing and utilization management protocols approved by Manager. Group shall provide full and prompt dental coverage for the Practice, including emergency service twenty-four hours per day, seven days per week, including holidays, according to policies and schedules approved by the Joint Operations Committee.

(b) Provider Subcontracts and Employment Agreements. Group shall not negotiate or execute any Provider Subcontract, Employment Agreement, or any amendment thereto, or terminate any Provider Subcontract or Employment Agreement without the approval of the Joint Operations Committee. Subject to Manager's responsibilities under Section 2.6(b), Group shall be responsible for the payment, in accordance with the Annual Budget, of all Employee and Subcontract Providers.

5.3 Peer Review. Group, after consultation with the Joint Operations Committee, shall implement, regularly review, modify as necessary or appropriate and obtain the commitment of Providers to actively participate in peer review procedures for Providers. Group shall assist Manager in the production of periodic reports describing the results of such procedures. Group shall provide Manager with prompt notice of any information that raises a reasonable risk to the health and safety of Group Patients or Beneficiaries. In any event, after consultation with the Joint Operations Committee, Group shall take such action as may be reasonably warranted under the facts and circumstances.

5.4 Billing Information and Assignments. Group shall promptly provide Manager with all billing and patient encounter

information reasonably requested by Manager for purposes of billing and collecting for Group's services. Group shall use reasonable efforts to procure consents to assignments and other approvals and documents necessary to enable Manager to obtain payment or reimbursement from third party payors and patients. With the assistance of Manager, Group shall obtain all provider numbers necessary to obtain payment or reimbursement for its services.

5.5 Third Party Contracts. Group shall be in compliance with all contracts, agreements and arrangements, including any contracts that exist on the Effective Date, between Group and third parties.

5.6 Use of Manager's Goods and Services. Group shall not use any goods or services provided by Manager pursuant to this Agreement for any purpose other than the provision of and management of dental services as contemplated by this Agreement and purposes incidental thereto.

5.7 Negative Covenants. During the Term, Group shall not, without the prior approval of the Joint Operations Committee, (a) assign, pledge, mortgage or otherwise encumber any of its property, (b) transfer substantially all of its assets, including its goodwill, (c) merge or consolidate with any other entity, (d) allow the transfer or issuance of any of its stock (other than in accordance with the terms and provisions of those certain Share Acquisition Agreements dated October __, 1996 between Manager and each of the persons set forth on Schedule A hereto), or (e) take or allow any act that would materially impair the ability of Group to carry on the business of the Practice or to fulfill its obligations under this Agreement.

ARTICLE 6

TERM

6.1 Term. This Agreement shall be effective as of October __, 1996 (the "Effective Date"), and shall remain in effect for an initial term of forty (40) years from the Effective Date, expiring on the fortieth (40th) anniversary of the Effective Date, unless earlier terminated pursuant to the terms of this Agreement. The word "Term" shall include such initial term and, where applicable, any extension of such initial term (whether extended pursuant to Section 6.2(a) or otherwise), subject to earlier termination pursuant to the provisions of this Agreement.

6.2 Termination and Extension.

(a) Automatic Extension. At the end of the initial term and any subsequent term, this Agreement shall automatically renewed for a five (5) year term unless one of the parties provides the other party with written notice of intent not to renew, not less

than one hundred eighty (180) days prior to the expiration of the then current term.

(b) Early Termination. This Agreement may be terminated according to the provisions of this Section.

(1) Material Breach. In the event either party materially breaches this Agreement and such breach is not cured to the reasonable satisfaction of the non-breaching party within thirty (30) days after the non-breaching party serves written notice of the default upon the defaulting party (the "Default Notice"), the Agreement shall automatically terminate at the election of the non-breaching party upon the giving of a written notice of termination to the defaulting party not later than fifteen (15) days after termination of the 30-day cure period; provided that if such uncured breach is only capable of being cured within a reasonable period of time in excess of thirty (30) days, the non-breaching party shall not be entitled to terminate this Agreement so long as the defaulting party has commenced such cure and thereafter diligently pursues such cure to completion.

(2) Refusal To Comply. In the event that Group or Manager refuses or fails to comply with a decision of the Joint Operations Committee, the aggrieved party shall have the option to require the non-complying party to participate in good faith mediation under the auspices of the American Mediation Association, and if such dispute between Group and Manager continues for sixty (60) days after the date the aggrieved party exercises its option regarding mediation, the non-complying party shall have thirty (30) days in which to comply with the decision of the Joint Operations Committee. If the non-complying party has not complied by the end of such thirty (30) day period, the aggrieved party shall have the option to terminate this Agreement upon fifteen (15) days' prior written notice. During such mediation, Manager and Group shall continue to operate and manage the Practice in good faith.

(3) Bankruptcy. A party may, upon three (3) days' prior written notice, terminate this Agreement if the other party:

(A) Applies for or consents to the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets, files a voluntary petition in bankruptcy or consents to an involuntary petition, makes a general assignment for the benefit of its creditors, files a petition or answer seeking reorganization or arrangement with its creditors, or admits in writing its inability to pay its debts when due, or

(B) Suffers any order, judgment or decree to be entered by any court of competent jurisdiction, adjudicating such party bankrupt or approving a petition seeking its reorganization or the appointment of a receiver, trustee or liquidator of such party or of all or a substantial part of its assets, and such

order, judgment or decree continues unstayed and in effect for ninety (90) days after its entry.

(4) Nonperformance. Manager may terminate this Agreement in the event that in any two consecutive fiscal quarters the Manager has not been paid the Management Fee and, in the sole discretion of the Manager, it is not reasonably likely that the Management Fee will be paid in the next fiscal quarter. Any such termination shall be effective as of the last day of such third fiscal quarter provided at least 60 days notice shall have been given; otherwise, such termination shall be effective on the sixtieth day after notice is given.

(5) Change in Law. In the event of any material change in federal or state law that has a significant adverse impact on either party hereto in connection with their performance under this Agreement, or if performance by a party of any duties under this Agreement be deemed illegal by any administrative agency or in a formal opinion rendered to Manager by legal counsel knowledgeable in health law matter retained by the Manager, the affected party shall have the right to require that the other party renegotiate the terms of this Agreement. Unless the parties otherwise mutually agree in writing, such renegotiated terms shall be effective not later than twenty (20) days after receipt of written notice of such request for renegotiation. Solely in the event of illegality, if the parties fail to reach an agreement within thirty (30) days of the request for renegotiation, either party may (subject to the severability provision of this Agreement) terminate this Agreement upon thirty (30) days' prior written notice to the other party.

(c) Effect of Termination. Upon termination of this Agreement:

(1) Group shall surrender to Manager all of Manager's property used primarily in the operation of the Practice in the same condition as received, reasonable wear and tear excepted.

(2) Manager shall deliver to Group all records related to the business of and provision of dental care through the Practice including, without limitation, patient records and any corporate, personnel and financial records maintained for the Practice and Providers, provided, that except as limited by law, including, but not limited to laws governing the confidentiality of patient records, Manager shall have the option to copy (or otherwise duplicate) at its sole cost and expense such records of Group and to retain and utilize such records for its own use;

(3) Manager shall deliver to Group any other property of Group in Manager's possession;

(4) Both parties shall cooperate to ensure the provision of appropriate dental care to Group Patients and Beneficiaries;

(5) Group shall promptly deliver to Manager any Revenues that it may receive in payment for dental services rendered by Group prior to termination; and

(6) Both parties shall cooperate to ensure the appropriate billing and collections for dental services rendered by Group prior to the effective date of termination, and any such cash collected shall be retained by Group and/or paid to Manager pursuant to Article 7.

ARTICLE 7

MANAGEMENT FEE

For its services hereunder, which shall include the providing of all facilities and furniture, fixtures and equipment at the Practice, all non-dentist employees of Manager who perform services at or for the Practice and all management services provided hereunder, Manager shall retain as a Management Fee (the "Management Fee") all Revenues after payment of Group Expenses.

ARTICLE 8

INDEMNITY AND INSURANCE

8.1 Indemnity.

(a) Indemnification. Each party shall indemnify, defend and hold harmless the other party from any and all liability, loss, claim, lawsuit, injury, cost, damage or expense whatsoever (including reasonable attorneys' fees and court costs) arising out of, incident to or in any manner occasioned by the performance or nonperformance of any duty or responsibility under this Agreement by such indemnifying party, or any of their employees, agents, contractors or subcontractors; provided, however, that neither party shall be liable to the other party hereunder for any claim covered by insurance, except to the extent that the liability of such party exceeds the amount of such insurance coverage. Specifically, and without limiting the generality of the foregoing, Group agrees to indemnify, defend and hold harmless Manager for all liability, loss, claim, lawsuit, injury, cost, damage or expense whatsoever (including reasonable attorneys' fees and court costs) arising out of the professional negligence of Group, its employees, agents, contractors or subcontractors, including any amounts in excess of the professional liability insurance coverage of Group or its employees, agents, contractors or subcontractors.

(b) Mutual Indemnity. Subject to Manager's responsibilities under Section 2.6(b), each party to this Agreement shall be indemnified by the other party for any claim under this Agreement or otherwise against the indemnified party for vacation pay, sick

leave, retirement benefits, Social Security benefits, workers' compensation benefits, disability or unemployment, insurance benefits, or other employee benefits of any kind accrued during the term of this Agreement by an employee of the indemnifying party.

8.2 Manager's Insurance. Manager shall, on its own behalf and at its sole cost and expense, procure and maintain in force during the term of this Agreement policies in the following categories in the amount indicated:

(a) Comprehensive general liability insurance covering the risks of Manager, in an amount determined by the Joint Operations Committee;

(b) Workers' compensation insurance covering the employees of Manager, in such amounts as is usual and customary under the circumstances;

(c) Property insurance covering the facilities, equipment and supplies owned or leased by Manager or Group for use in the operation of the Practice.

8.3 Group's Insurance. At Group's sole cost and expense, Manager shall obtain, and maintain on behalf of Group in full force and effect during the Term, policies in the following categories in the amount indicated:

(a) Comprehensive professional liability insurance coverage for Group and Group's Employee Providers, in such amounts as Group shall reasonably deem necessary; provided, however, such coverage shall be no greater than that set forth on Schedule B hereto without the prior consent of the Joint Operations Committee, which consent shall not be unreasonably withheld;

(b) Workers' compensation insurance covering the employees of Group, in such amounts as is usual and customary under the circumstances;

(c) Comprehensive general liability insurance covering the risks of Group, in an amount determined by the Joint Operations Committee.

ARTICLE 9

BOOKS AND RECORDS

9.1 Ownership of Records. All business records and information relating exclusively to the business and activities of either party shall be the property of that party, irrespective of identity of the party responsible for producing or maintaining such records and information. Without limiting the foregoing, all patient charts and records maintained by Manager relating to the

dental services of Group shall be the property of Group. Group also shall be entitled to a copy at Group's sole cost of all business records pertaining to Group. Except as limited by law, including, but not limited to laws governing the confidentiality of patient records, Manager shall be entitled to a copy at Manager's sole cost of all records of Group.

ARTICLE 10

MISCELLANEOUS PROVISIONS

10.1 Assignment. Neither party shall assign this Agreement to any other party or parties without the prior written consent of the other party, which consent may be withheld arbitrarily or capriciously, for any reason or for no reason whatsoever and any attempted assignment in violation of this Agreement shall be null and void.

10.2 Headings. The article and section headings used in this Agreement are for purposes of convenience only. They shall not be construed to limit or to extend the meaning of any part of this Agreement.

10.3 Waiver. Waiver by either Group or Manager of any breach of any provision of this Agreement shall not be deemed to be a waiver of such provision or of any subsequent breach of the same or of any other provision of this Agreement.

10.4 Notices. Any notice, demand, approval, consent, or other communication required or desired to be given under this Agreement in writing shall be personally served or given by overnight express carrier or by mail, and if mailed, shall be deemed to have been given when five (5) business days have elapsed from the date of deposit in the United States mails, certified and postage prepaid, addressed to the party to be served at the following address or such other address as may be given in writing to the parties.

Group: Idaho Dental Group, P.A.
Pine Ridge Mall
4155 Yellowstone Avenue
Attn: Pocatello, ID 83202
Dr. David P. Sutton

Manager: GMS Dental Group Management Inc.
180 North Riverview Drive
Suite 255
Anaheim Hills, CA 92808
Attn: Mr. Grant Sadler

10.5 Attorneys' Fees. If any legal action or arbitration or other proceeding is commenced, whether by Manager or Group

concerning this Agreement, the prevailing party shall recover from the losing party reasonable attorneys' fees and costs and expenses, including those of appeal and not limited to taxable costs, incurred by the prevailing party, in addition to all other remedies to which the prevailing party may be entitled. If a claim or claims asserted by a third party against Manager or Group or any of them arise from an action or omission by the other, the party responsible for the action or omission shall be the losing party, and the other party shall be the prevailing party, for purposes of the foregoing sentence.

10.6 Successors. Without limiting or otherwise affecting any restrictions on assignments of this Agreement or rights or duties under this Agreement, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of Group and Manager.

10.7 Entire Agreement. This Agreement sets forth the entire agreement between Group and Manager and supersedes all prior negotiations and agreements, written or oral, concerning or relating to the subject matter of this Agreement, and this Agreement may not be modified except by a writing executed by all parties and subject to the provisions thereof.

10.8 Governing Law. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of California.

10.9 Severability. If any provision of this Agreement is held to be invalid or unenforceable by any court or administrative agency of competent jurisdiction, or in a written opinion to the Manager by legal counsel knowledgeable in health law matters retained by the Manager, such holding or opinion shall not affect the validity and enforceability of the other provisions of this Agreement and the remainder of this Agreement shall be considered valid and operative to the fullest extent permitted by law, but only if and to the extent such enforcement would not materially and adversely frustrate the parties essential objectives as expressed herein.

10.10 Time is of the Essence. Time is of the essence in this Agreement.

10.11 Authority. Any Person signing this Agreement on behalf of any entity hereby represents and warrants in its individual capacity that it has full authority to do so on behalf of such entity.

10.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an

original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Group and Manager have caused their authorized representatives to execute this Agreement on the date first above written.

"Group"

IDAHO DENTAL GROUP, P.A., an
Idaho professional corporation

By: 

David Porter Sutton
President

"MANAGER"

GMS DENTAL GROUP MANAGEMENT,
INC., a Delaware corporation

By: 

Grant M. Sadler
President

ADDENDUM 1.

For purposes of this Agreement, the following terms shall have the meaning indicated below or defined at the indicated section:

(1) Accounts. See Section 2.5(a).

(2) Affiliate. "Affiliate" shall mean, with respect to any Person, (i) any individual or entity directly or indirectly owned or controlled by such Person, (ii) any individual or entity directly or indirectly owning or controlling such Person or (iii) any individual or entity directly or indirectly owned or controlled by the same family member, individual or entity as owns or controls such Person. For purposes of this Agreement, neither Group nor Manager shall be deemed an Affiliate of the other.

(3) Agreement. "Agreement" means this Group Management Agreement.

(4) Annual Budget. See Section 3.6, first sentence.

(5) Beneficiaries. See Recital A.

(6) Books and Records. "Books and Records" means Group's books of account, accounting and financial records and all other records relating to and used in the conduct of Manager's duties hereunder and also used in the preparation of reports and financial statements. The books and records at all times shall be correct and complete and contain correct and timely entries made with respect to transactions entered into pursuant hereto in accordance with GAAP.

(7) Capital Costs. "Capital Costs" shall mean any and all investments that are or would be capitalized pursuant to GAAP.

(8) Committee Members. See Section 3.5(a).

(9) Default Notice. See Section 6.2(b)(1).

(10) Dental Practice Assets. "Dental Practice Assets" means those contracts and agreements with dentist employees and independent contractors and other licensed health professional employees and independent contractors, independent physician associations and managed care plans, patient records and other assets required by statute, rule or regulation to be owned or held by an entity or person licensed to practice dentistry.

(11) Effective Date. See Section 6.1.

(12) Employee Providers. See Recital B.

(13) Employment Agreements. See Recital B.

(14) GAAP. "GAAP" means at any particular time generally accepted accounting principles as in effect at such time. Any accounting term used in this Agreement shall have, unless otherwise specifically provided herein, the meaning customarily given in accordance with GAAP, and all financial computations hereunder shall be computed unless otherwise specifically provided herein, in accordance with GAAP as consistently applied and using the same method of valuation as used in the preparation of Manager's financial statements.

(15) Group. See first paragraph of this Agreement.

(16) Group Expenses. See Section 2.6(b).

(17) Group Members. See Section 3.5(a).

(18) Group Patients. See Recital A.

(19) Joint Operations Committee. See Section 3.4(b).

(20) Management Fee. See Article 7.

(21) Manager. See first paragraph of this Agreement.

(22) Manager Members. See Section 3.5(a).

(23) Manager's Costs. "Manager's Costs" means all costs incurred by Manager including amortization associated with costs acquiring assets of the Group or covering operations and Capital Costs, direct labor costs, supplies, direct overhead and indirect overhead expense attributable to the management and operation of the Practice and direct and indirect corporate overhead of Manager including all interest expense and other expenses which are attributable to Manager's business operations in accordance with Manager's corporate allocation policies.

(24) Marks. See Section 2.3(a).

(25) Payor Contracts. See Recital A.

(26) Person. "Person" shall mean any natural person, corporation, partnership or other business structure recognized as a separate legal entity.

(27) Plans. See Recital A.

(28) Practice. See Recital A.

(29) Preliminary Budget. See Section 3.7(b).

(30) Programs. See Section 2.3(b).

(31) Providers. "Providers" shall mean individuals or organizations licensed to practice dentistry (including

specialists) as well as other licensed dental professionals who provide ancillary reimbursable dental services.

(32) Provider Subcontracts. See Recital A.

(33) Revenues. "Revenues" means all Revenues net of allowances for uncollectible accounts assigned hereunder by Group to Manager pursuant to Section 2.6(a).

(34) Subcontract Providers. See Recital B.

(35) Term. See Section 6.1.

SCHEDULE A

David P. Sutton
Dwight G. Romriell
Gregory E. Romriell
Errol K. Ormond
Arnold J. Goodliffe
Ernest P. Sutton
L. R. Misner, Jr.

SCHEDULE B

Professional Liability Insurance Coverage

DENTIST'S EMPLOYMENT AGREEMENT

THIS DENTIST'S EMPLOYMENT AGREEMENT (this "Agreement") is made and entered into this 11th day of October, 1996 by and between IDAHO DENTAL GROUP, P.A., an Idaho professional corporation ("Group"), whose primary office is located at Pine Ridge Mall, Chubbuck, Idaho 83202 and L. R. MISNER, JR., DMD ("Provider"), whose address is 2730 Kristen Pl., Pocatello, ID 83201.

W I T N E S S E T H:

WHEREAS, Group is a professional corporation organized under the laws of the State of Idaho to provide the professional services of dentistry; and

WHEREAS, Provider was previously affiliated as a member in Pocatello Dental Group P.L.L.C., an Idaho professional limited liability company (the "Pocatello Dental Group"); and

WHEREAS, Pocatello Dental Group has been merged (the "Merger") with and into GMS Dental Group, Inc., a Delaware corporation ("Company"), the sole shareholder of GMS Dental Group Management, Inc., with which Group has an affiliation; and

WHEREAS, prior to the Merger, pursuant to the terms of that certain Assignment Agreement dated as of October 11, 1996, all of Pocatello Dental Group's right, title and interest in all contracts with dentist employees and independent contractors and other licensed health professional employees and independent contractors, all independent physician association and managed care plan contracts, all patient records, and any and all other assets required by statute, rule or regulation to be owned or held by an entity licensed to practice dentistry, together with all goodwill associated with the foregoing (collectively, the "Dental Practice Assets") were assigned to Group; and

WHEREAS, Group desires to enter into employment agreements with dentists licensed to practice dentistry in the State of Idaho to provide dental services to patients of Group; and

WHEREAS, Provider possesses a valid, unrestricted license to practice dentistry in Idaho and specializes in the area or areas of dentistry indicated on Appendix A attached hereto and incorporated herein by reference; and

WHEREAS, Group wishes to employ Provider to provide dental services to the patients of Group and Provider wishes to accept such employment with Group in accordance with the terms and conditions set forth herein; and

WHEREAS, Group and Provider desire that this Agreement supersede all prior employment or employment-related agreements,

with the Pocatello Dental Group (collectively, the "Prior Employment Agreements"):

NOW, THEREFORE, in consideration of the recitals, covenants, conditions and promises contained herein, the parties agree as follows:

ARTICLE I
EMPLOYMENT AND DUTIES

1.1 Employment. Group employs Provider for the purpose of rendering professional dental services to patients on behalf of Group and Provider hereby accepts employment on the terms and conditions set forth herein.

1.2 Outline of Duties. During the term of this Agreement, Provider shall serve Group faithfully, and to the best of his ability in the practice of dentistry, shall devote his time, energy and skill to such employment and, at the request of Group, shall perform such services, advisory or otherwise, and shall act in such capacity or office for Group without compensation beyond that which is provided herein. Provider shall perform the duties and meet the obligations described herein, including the duties and obligations described in Appendix B attached to this Agreement and incorporated herein by reference.

1.3 Rights and Duties of Group.

(a) Group shall direct and supervise the duties and work of Provider but shall not impose employment duties or constraints of any kind which would require Provider to infringe the ethics of the dental profession or violate any ordinance or law.

(b) Group shall determine (i) whether an individual will be accepted as a patient of Group and (ii) which managed care plans (HMO's, PPO's, EPO's, etc.) Group contracts with and the amount of the fees or other payments to be charged with respect to professional services rendered by or available from Provider. Provider shall have the option to participate in each managed care plan or in the state welfare program. For each such plan, Provider will make an election to participate or not to participate, with such election being for a minimum period of one year from the date of such election. Notwithstanding anything to contrary herein, Provider may dismiss a patient from the practice if a satisfactory dentist-patient relationship cannot be achieved.

(c) Group shall have the right to assign patients among its dentist employees (and to change such assignments) pursuant to a process and plan for patient distribution similar to the process utilized by Pocatello Dental Group in September 1996 with due regard to established dentist-patient relationships, the economic well being of Group and the acuity, specialty, skills and workload of dentists.

(d) Group shall establish clinical hours and days when Provider shall perform Provider's duties pursuant to a process and plan implemented by Group which shall be subject to change to meet Group's needs.

(e) Group shall determine the place or places at which Provider's duties will be performed pursuant to a process and plan which takes into account Provider's wishes, patient volume, patient expectations and the wishes of other dentists and employees, except that Provider will only have to perform duties in Pocatello, Idaho.

(f) Group will provide, at its sole expense, professional liability insurance with per occurrence and aggregate limits as established from time to time by Group's Board of Directors. At a minimum, Provider shall be insured pursuant to a policy that will provide policy limits not less than the limits in the policy that insured Provider at August 1, 1996 during his tenure as a dentist for the Pocatello Dental Group. Provider will be insured under the same policy, and with the same limits, that Group provides its other dentist employees. Notwithstanding the foregoing, in the event that the premium cost for Provider exceeds the standard rate charged by the insurer for dentists with the same practice specialty as Provider, Group shall have the right, at its option, to require Provider to reimburse Group for the excess premiums.

ARTICLE II HOURS AND RESTRICTIONS

2.1 Hours. Provider shall be available to work the hours and days scheduled by Group, in Pocatello, Idaho with no evening or weekend hours to be scheduled. Provider shall devote Provider's entire productive professional time, ability and attention to the business of Group. In general, Provider is expected to work for Group a minimum of 1080 hours per year (with a maximum of four days per week); provided, however, that unless otherwise mutually agreed to by Provider and Group, Provider shall not be obligated to work more than 1080 hours per year (with a maximum of four days per week). Group may authorize Provider to work a lesser schedule, in which event it shall appropriately adjust Provider's compensation payable pursuant to Article IV.

2.2 Restrictions. During the term of this Agreement, Provider shall not directly or indirectly render or agree to render any services of a professional dental nature to or on behalf of any other person or organization, for compensation or otherwise (except as otherwise agreed in writing by Group, within twenty miles of Pocatello, Idaho) and shall not render any services of a business or commercial nature which Group determines is likely to reflect adversely on Group or Provider with respect to the practice of dentistry; provided, however, that nothing in

this Agreement shall prohibit Provider from teaching at a dental school and/or dental hygiene school.

ARTICLE III TERM OF EMPLOYMENT

The term of this Agreement (the "Term") shall commence on the effective date of the merger between Pocatello Dental Group and Company and shall continue in effect until the tenth anniversary of such date, unless renewed as set forth below or terminated earlier pursuant to the provisions of this Agreement. After the tenth anniversary, this Agreement shall renew each year for a one (1) year period unless either party gives the other party at least six (6) months notice of its intent not to renew this Agreement.

ARTICLE IV COMPENSATION

4.1 Compensation. Group shall pay to Provider the compensation set forth on Appendix C attached hereto and incorporated herein by reference in accordance with the provisions set forth therein.

4.2 Assignment of Professional Fees. Provider hereby assigns to Group all amounts directly or indirectly payable as a result of professional services provided by Provider for Group during the term of this Agreement (including, in the case of capitated payments, professional services which Provider is prepared to provide or has provided), including by way of example and not by way of limitation amounts paid by patients, amounts paid by any insurance company, amounts paid pursuant to any governmental program (Medicaid, etc.), amounts paid pursuant to any workers' compensation program, amounts paid by employers or employer plans and amounts paid by any other third party payor (collectively, "third party payors").

4.3 Tax Withholding. Except as otherwise provided by law, all amounts payable pursuant to Article IV, V, VI and IX shall be subject to all required or authorized payroll withholding, including, but not limited to, withholding for state, federal and local income or payroll tax.

ARTICLE V EMPLOYMENT BENEFITS

During the term of this Agreement, Provider shall be entitled to participate, in accordance with their terms, in all plans of accident, medical, health, disability, pension, savings and similar benefits which are generally made available to employees of Group, as such benefits may be increased, decreased, modified or discontinued from time to time by Group. The benefits to be

provided at this time shall be those set forth on Appendix D hereto.

ARTICLE VI TERMINATION

6.1 Termination by Provider. Provider may terminate this Agreement by giving Group a written notice of termination. Such termination shall be effective upon the earlier of 60 days after the date of such notice or the expiration of the term of this Agreement (the "Effective Date"). Prior to the Effective Date and after the date of such termination notice, Provider shall continue to be entitled to the compensation and benefits which are payable hereunder. After the Effective Date, Provider shall have no right to receive salary or benefits except to the extent legally mandated or accrued and payable at such date. Notwithstanding any other provision of this Agreement, Group may exclude Provider from some or all of its facilities or from providing professional services to Group patients at any time prior to the Effective Date but such exclusion shall not otherwise affect Provider's rights and obligations hereunder. In the event Group elects to exclude Provider from its facilities or from providing professional services at any time prior to the Effective Date, Group shall pay Provider as salary during the period that Provider is so excluded an amount equal to the compensation Provider received during the equivalent time period immediately prior to Provider's delivery of written notice of termination. The equivalent time period shall be measured by counting backwards from the date the termination notice was delivered the number of days Provider is excluded by Group from Group's facilities or from providing professional services.

6.2 Termination by Group Without Cause.

During the term of this Agreement, Group may terminate this Agreement without cause by providing Provider a written notice of termination. If Group elects to terminate Provider's employment without cause, then (a) Provider shall be entitled to receive an amount equal to the compensation paid to Provider over the twelve month period immediately preceding such termination, and shall be paid in twelve equal monthly installments, (b) subject to applicable legal requirements, Provider shall be entitled to continued benefit coverage pursuant to Article V during the period for which compensation is payable and (c) Provider shall have no right to any bonus which is determined after the date of the termination notice. Except as provided in this Section 6.2, Provider shall have no rights to any salary, bonus, benefits or other compensation as a result of such termination. Notwithstanding any other provision of this Agreement, Group may, at any time after the termination notice, exclude Provider from some or all of the facilities of Group or from providing services to patients of Group, but such exclusion shall not otherwise affect Provider's rights and obligations hereunder.

6.3 Termination by Group With Cause. Notwithstanding any other provision in this Agreement, Group shall have the right to terminate this Agreement for cause upon written notice to Provider, subject to any applicable due process rights of Provider. Upon a termination for cause, Provider shall not be entitled to receive compensation, continued benefit coverage (except to the extent legally mandated) or any other compensation. For the purposes of this Agreement, cause shall be defined as:

(a) Restriction, suspension or revocation of Provider's license to practice dentistry in the state of Idaho;

(b) Conviction of Provider of a felony or conviction of a misdemeanor involving moral turpitude;

(c) Determination by Group in its sole and absolute discretion that Provider is professionally incompetent;

(d) The material breach of any term of this Agreement by Provider unless such breach can reasonably be cured within thirty (30) days and is in fact cured within thirty (30) days after Provider receives written notice of the breach from Group;

(e) Failure to qualify or be eligible for professional malpractice insurance in amounts required by Group for its professional employees or, if such insurance can only be obtained at higher than standard rates, failure of Provider to pay that portion of the premium which is in excess of the standard rate;

(f) Material failure of Provider to comply with Group's peer review, quality assurance or utilization review procedures or availability and accessibility standards as established from time to time by Group; and

(g) Material failure of Provider to comply with Group's policies and procedures, including but not limited to failure of Provider to conduct his/her personal and professional affairs in such a manner as to reflect favorably upon Group.

ARTICLE VII REPRESENTATIONS

7.1 Representations by Group.

(a) Group hereby represents and warrants that it is an Idaho professional corporation in good standing with the State of Idaho.

(b) Group represents and warrants, subject to the compensation requirements in Appendix C, that it will furnish all apparatus, instruments, equipment, supplies, laboratory services and support personnel reasonably necessary to permit Provider to conduct the practice of dentistry in accordance with this Agreement.

7.2 Representations by Provider.

(a) Provider hereby represents and warrants that he is currently, and during the term of this Agreement shall remain, a dentist duly licensed to practice dentistry in the state of Idaho and in good standing with the applicable Board of Dental Examiners or equivalent.

(b) Provider hereby represents and warrants to Group and Group relies on Provider's representation that by entering into this Agreement he is not in any way breaching any other agreement, whether written or oral.

ARTICLE VIII DENTAL RECORDS

With respect to each patient to whom Provider provides service, Provider shall maintain in legible form a standard dental record in such form and containing such information as are required by Group and Group will provide support services and systems to assist Provider in doing so. Notwithstanding the foregoing, Group shall have custody of and shall be the sole owner of all dental records concerning patients of Group.

ARTICLE IX PROPRIETARY INFORMATION; NON SOLICITATION; NON-COMPETITION

It is understood that Provider is a fiduciary of Group with regard to proprietary information. "Proprietary Information" includes all information and any idea which a reasonable person would believe is confidential, in whatever form, tangible or intangible, pertaining in any manner to the business of Group, unless (i) the information is or becomes publicly known through lawful means, (ii) the information was rightfully in Provider's possession or part of his general knowledge prior to his employment with Group or (iii) the information is subsequently disclosed to Provider by a third party without breach of this Agreement and without restriction on its use. Provider agrees to hold all Proprietary Information in confidence and not to directly or indirectly disclose, use, copy, publish, summarize or remove from Group's premises any Proprietary Information, except (i) during the term of this Agreement, to the extent necessary to carry out his responsibilities under this Agreement or (ii) after termination of this Agreement as specifically authorized in writing by Group.

All writing or works, including but not limited to training materials, practice guides, practice development aids, methodologies, books, marketing proposals and brochures, pamphlets, systems, computer programs, operation instructions, and all other documentation, techniques, or methods created or conceived by Provider during the term of this Agreement and related to the

specific performance of Provider's duties to Group, Company Sub or any affiliate or subsidiary of either Group or Company Sub, and any and all intellectual property right therein, shall at all times become and remain the exclusive property of Group, provided, however, that this Agreement does not require assignment of an invention which qualifies fully for protection under applicable state law in the state in which Provider has his permanent residence. Provider shall, upon request by Group, execute any documents necessary to give effect to the terms of this Article IX.

In the event of termination of Provider's employment with Group for any reason, Provider shall return, or cause to be returned, to Group any and all of Group's property, including but not limited to the above-listed property and property which is in Provider's control or possession at such time. Provider shall be entitled to copies of patient dental records in the event of claims or litigation alleging professional liability against Provider or pursuant to a duly authorized request by or on behalf of the patient.

For a period of two (2) years after termination of Provider's employment, Provider shall not, directly or indirectly (a) solicit in any way on behalf of himself or in conjunction with others any patient being or having been under the care and treatment of Provider and/or Group or any subsidiary, affiliate or successor in interest to Group at any time during the term of this Agreement for the purpose of providing dental benefits or dental care, or (b) solicit in any way or make offers of employment to, on behalf of himself or in conjunction with others, any person employed by Group, Company Sub or any subsidiary or affiliate of Group or Company Sub, during the period of such person's employment by Group or Company Sub and for a period of one year thereafter. This provision shall not prohibit Provider from announcing in a newspaper of general circulation his practice relocation upon termination of employment hereunder.

Provider agrees that, during the two (2) year period immediately following termination of his employment hereunder unless such termination is effected by Group pursuant to Section 6.2 or Section 10.2 hereof, Provider shall not, serve as an employee, independent contractor, consultant or otherwise, directly or indirectly, perform services for a person or entity or own or operate any entity engaged in the business of providing dental benefits or dental care (a "Dental Business"), within a twenty mile radius of the location of any facility at which Group engages in a Dental Business. For purposes of this Agreement, ownership of less than 2% of the outstanding securities of a Dental Business shall not constitute a violation of this Agreement. It is agreed by the parties hereto that the restrictions set forth in this Article IX are reasonable and necessary to protect the confidentiality of the trade secrets, and other confidential information concerning Group.

The parties agree that the remedy at law for any breach of such covenant or of the related covenants set forth herein would be inadequate, and that therefor Group or any other person entitled to enforce such covenants shall be entitled to injunctive relief thereon in addition to its rights to monetary damages.

In the event the provisions of this Article IX should ever be adjudicated by a court of competent jurisdiction to exceed the time or geographic or other limitations permitted by applicable law, then such provisions shall be deemed reformed to the maximum time or geographic or other limitations permitted by applicable law, as determined by such court in such action.

ARTICLE X DISABILITY

10.1 Disability of Provider. In the event that Provider shall be absent from work due to physical or mental incapacity ("disability"), Group agrees to advance to the Provider during his absence the full amount of his compensation for up to sixty days, subject to the monthly reconciliation requirements detailed in Appendix C of this Agreement. Moreover, at the request of Provider, Group shall for a period of sixty (60) days after Provider has become disabled, arrange for other dentists employed by the Group to assume the responsibility for the continuing care of disabled Provider's scheduled patients, and will complete all cases in progress that cannot reasonably wait for his return. All fees so generated during the sixty (60) day period will be credited to the collections of disabled Provider.

10.2 Leave of Absence. After sixty days, as specified in the preceding paragraph 10.1, Group shall determine whether or not Provider should be placed on a leave of absence. In that event Provider shall receive no further compensation advances but shall participate in the monthly reconciliation, pursuant to Appendix C. If under the compensation formula, Provider is entitled to compensation, Group shall promptly pay Provider accordingly. If Provider has taken more compensation than he is entitled to under the compensation formula, Provider shall promptly reimburse the Group. If after 12 months Provider's disability still prevents him from returning to work, Group may in its sole discretion terminate Provider. During Provider's leave of absence, Provider also shall be entitled to receive any benefits for which he is eligible pursuant to the benefit programs described in Article V, but, after the effective date of termination, he shall not be entitled to any other benefits, unless legally mandated.

10.3 Partial Disability. If Provider is partially disabled but could still perform the functions of his work with reasonable accommodation, Group will determine whether such accommodation will cause an undue hardship to Group. If Provider cannot perform the functions of his dental practice or the accommodation required would cause an undue hardship on the Group, Group shall have the

right to declare Provider totally disabled, in which event the provisions of 10.1-10.2 shall apply.

10.4 Participation in Disability Support. In the event another dentist employee becomes disabled, and at that time Provider is not disabled, Provider agrees to participate, together with the other non-disabled dentists, in the treatment of the disabled employee's patients, pursuant to the same arrangement that, pursuant to 10.1, would be available to Provider in the event of his disability.

10.5 Voluntary Leave of Absence. Upon the consent of Group, which may not be unreasonably withheld, Provider may take a leave of absence for religious reasons or to engage in activities believed to be in the best interest of Group. In that event Provider shall receive no further compensation advances but shall participate in the monthly reconciliation, pursuant to Appendix C. If under the compensation formula, Provider is entitled to compensation, Group shall promptly pay Provider accordingly. If Provider has taken more compensation than he is entitled to under the compensation formula, Provider shall promptly reimburse the Group. If Provider does not return to work at the end of such leave, Group may in its sole discretion terminate Provider. During Provider's leave of absence, Provider also shall be entitled to receive any benefits for which he is eligible pursuant to the benefit programs described in Article V, but, after the effective date of termination, he shall not be entitled to any other benefits, unless legally mandated. In no event shall a leave of absence permitted under this paragraph 10.5 exceed 18 months. A Provider may not take more than one leave of absence under this paragraph 10.5.

ARTICLE XI USE OF NAME/ LIKENESS

Subject to Provider's prior consent, which consent shall not be unreasonably withheld, Provider hereby grants to Group and third party payors which contract with Group, the right to use his name and likeness during the term of the Agreement (and for a period of one year thereafter with respect to materials prepared prior to such termination) in their promotional activities, rosters, directories and marketing campaigns; provided, however, that Provider's consent shall not be required with respect to promotional activities, rosters, directories and marketing campaigns prepared and conducted in accordance with the activities, rosters, directories and marketing campaigns conducted by Pocatello Dental Group.

ARTICLE XII
MISCELLANEOUS PROVISIONS

12.1 Notices. All notices required to be given hereunder shall be in writing and shall be deemed delivered if personally delivered or dispatched by certified or registered mail, return receipt requested, postage prepaid, addressed to the parties as follows:

Group: Idaho Dental Group, P.A.
Pine Ridge Mall
Chubbuck, Idaho, 83202
Attn: Porter Sutton

Provider: L.R. Mizer, Jr., D.D.S.
2730 Kristen Pl.
Pocatello, Idaho 83201

Notice shall be deemed given on the date it is deposited in the mail in accordance with the foregoing. Any party may change the address to which to send notices by notifying the other party of such change of address in writing in accordance with foregoing.

12.2 Gender and Pronouns. Whenever appropriate from the context of this Agreement, the use of any gender shall include any and all other genders and the single gender shall include the plural and the plural number shall include the singular.

12.3 Governing Law. The existence, validity and construction of this Agreement shall be governed by laws of the State of Idaho.

12.4 Assignment. This Agreement shall be binding on the parties and their respective successors and assigns. Neither party shall assign this Agreement without the prior written consent of the other party, except that subject to applicable law, Group may assign this Agreement to Company, Company Sub or any of its affiliates. In such event, Provider shall be deemed to have agreed to the assignment until the end of the term of this Agreement.

12.5 Waiver. The waiver by either party to this Agreement of any one of more defaults, if any, on the part of the other, shall not be construed to operate as waiver of any other or future defaults, under the same or different terms, conditions or covenants contained in this Agreement.

12.6 Caption and Headings. The captions and headings contained in this Agreement are for convenience of reference only and shall in no way be held or deemed to be a part of or affect the interpretation of this Agreement.

12.7 Entire Agreement. This Agreement states the entire contract between the parties in respect to the subject matter of this Agreement and supersedes any oral or written proposals,

statements, discussions, negotiations, or other agreements before or contemporaneous to this Agreement. This Agreement may be modified only by mutual agreement of the parties provided that, before any modification shall be operative or valid, it be reduced to writing and signed by both parties.

12.8 Supersession. Provider agrees that this Agreement supersedes all Prior Employment Agreements subject to Company as the successor to Pocatello Dental Group, also agreeing to such supersession and that, as a consequence, neither Provider, Pocatello Dental Group, Group (as the assignee of any such Prior Employment Agreements) nor Company shall have any rights, duties or obligations under any Prior Employment Agreement.

12.9 Arbitration Provision. Any dispute or controversy arising out of or relating to this Agreement shall be settled exclusively by arbitration, in accordance with the rules of the American Arbitration Association, except where federal or Idaho law requires otherwise. The parties acknowledge and agree that Bannock County, Idaho is an appropriate forum for any such arbitration. Judgment may be entered on the arbitrator's award in any court having proper jurisdiction. The costs of such arbitration shall be borne by the prevailing party in such arbitration, who shall be entitled to recover from the non-prevailing party, as part of any award entered, his or its reasonable expenses including attorneys' fees, costs and other out-of-pocket disbursements.

12.10 Partial Invalidity. If any provision of this Agreement is held to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way and any provision

held to be too restrictive shall be modified so as to give effect to the intent thereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year set forth hereinabove.

Dated: October 11, 1996

IDAHO DENTAL GROUP, P.A.

By [Signature]
Title President

PROVIDER:

[Signature]
L. R. Misner, Jr. ~~DMD~~ DDS

GMS Dental Group, Inc., as successor to Pocatello Dental Group, hereby agrees to Section 12.8 of this Agreement.

GMS DENTAL GROUP, INC.

By [Signature]
Grant M. Sadler, President

APPENDIX A

States in which Licensed:

Idaho

Dental Specialties:

Pedodontics

APPENDIX B

DUTIES AND OBLIGATIONS OF PROVIDER

1. Normal and Customary Functions. Provider agrees to perform the normal and customary functions of a dentist practicing dentistry in his specialty(ies).

2. Compliance with Law and Ethical Standards. Provider shall, at all times during the term of this Agreement, comply with all applicable federal, state or municipal statutes or ordinances, all applicable rules and regulations of any board or other licensing or regulatory body and the ethical standards of the American Dental Association and the dental association of any state in which Provider practices dentistry.

3. Continuing Education. During the term of this Agreement, Provider shall maintain his professional competence and skills commensurate with the dental standards of Group, and as required by law, by attending and participating in continuing education courses.

4. Compliance with Articles, Bylaws and Group Rules. Provider agrees to be bound by and comply with all of the provisions of the Articles of Incorporation, Bylaws, plans, programs, policies and procedures of Group as well as all provisions of any process and plan established by Group or any determinations made by Group pursuant to a provision of this Agreement. Provider recognizes that the Articles of Incorporation, Bylaws, plans, programs, policies, procedures or processes and plans and Group determinations (collectively, the "Rules") may be terminated, modified or amended from time to time by the members of Group and agrees to be bound by and comply with such Rules as so terminated, modified or amended; provided, however, that no termination, modification or amendment shall be adopted which substantially reduces the overall benefits to Provider while this Agreement is in effect.

5. Peer Review, Etc. Provider agrees to participate in and abide by the provisions and determinations of any peer review, utilization review or quality assurance program which is established by Group or to which Group has agreed to be subject.

6. Cooperation. Provider agrees to reasonably cooperate with Group in helping Group to meet its obligations to third parties.

7. Discrimination. Provider agrees not to differentiate or discriminate in the provision of services to patients due to race, color, nation origin, ancestry, religion, sex, marital status, disability, sexual orientation or age, except as medically indicated.

8. Compliance with OSHA. Provider agrees to comply with all pertinent state, local, OSHA or similar requirements, including receiving specific immunizations, and to comply with activities necessary to insure Group's "drug free" environment status.

9. Enhancement of Professional Practice. Provider agrees to reasonably promote, to the extent permitted by law and professional ethics, the professional practice of Group by maintaining and improving rapport with peers, patients, referring dentists and managed care plans.

10. After Hours/Emergency Coverage. Provider shall be available for after hours and emergency coverage to assist the on call dentist with emergencies for small children (three years and under) where there is a severe injury or illness and when Provider is within twenty miles of any dental office of Group.

11. Call Rotation. Provider shall serve Group's call rotation in accordance with call rotation practices approved by Group after consultation with Provider's clinical department.

APPENDIX C

Compensation

Provider's annual compensation shall be (i) 36% of his Net Collections in year one, 37% of his Net Collections in year two and 38% of his Net Collections in year three and thereafter, in each case less (ii) Allocable Excess Expenses. In addition, in any calendar year in which the Net Collections of Provider less Allocable Excess Expenses exceeds \$700,000, Provider will receive an additional 2% of his Net Collections less Allocable Excess Expenses.

"Allocable Excess Expenses" means the following expenses allocable to the Net Collections of Provider:

↖ (a) direct labor costs of the dental hygienists, dental assistants, receptionists and any other personnel assigned to Provider in excess of 21% of his Net Collections; and

(b) direct laboratory expenses in excess of 6.5% of his Net Collections.

"Net Collections" means cash collections collected after the Closing Date for revenues produced by Provider, before or after the Closing Date, net of adjustments for cash payments or losses made or suffered by New Group attributable to Provider's dental work, including but not limited to, billing service "buy backs," patient cash refunds, bad checks, etc. For purposes of this Agreement, cash collections shall mean moneys collected from patients who are not covered under a prepaid dental plan (commonly referred to as capitation plan). For those patients covered under a prepaid dental plan, a compensation formula for each plan will be specifically developed, which will have as its basis a percentage formula similar to that described above except that net collections will be replaced by a relative value unit ("RVU") system which adds the premiums and patient copayments together to obtain an RVU pool from which distributions will be made based on the number of RVU's attributable to a Provider. "Closing Date" shall be as defined in that certain Agreement and Plan of Reorganization dated October 11, 1996 by and among Company, the individuals signatory thereto, Pocatello Dental Group and Group.

Payment of Compensation

Provider shall receive an advance on his compensation in the amount of \$_____ twice monthly. Calculation of the actual compensation to be paid to Provider for a specific month shall be completed on or before the fifth day of the following month. In the event Provider is entitled to compensation in addition to the

amounts advanced during the preceding month, Group shall immediately pay to Provider the difference between the amounts advanced and the actual compensation. In the event Provider's actual Salary is less than the amounts advanced during the preceding month, then Provider shall immediately Pay to Group the surplus advances received.

Appendix D
Benefit Plans

1. Non contributory 401K Plan
2. Cafeteria Plan
3. Dental benefits for Provider
4. Medical benefits for Provider

Addendum to Dentist Employment Agreement

The material breach of any term of this Agreement entered into by the Provider with the Group, unless such breach can be reasonably cured within thirty (30) days, and is in fact cured within thirty (30) days, after Group receives written notice of the breach from the Provider, then the terms of this Agreement will be considered non-binding on the Provider.

10/8/06
L. M. Minich

Ms. Minich

GMS

4155 Yellowstone
Chubbuck, Idaho 83202

January 7, 1998



22800 Savi Ranch Parkway
Suite 206
Yorba Linda, Ca 92887

Dear Ken:

Thank you for meeting with us on Thursday Dec. 18th. We appreciate the way you resolved the bonus problem for our staff. We will use the 2% increase earmarked for each of us to reward them through out the year. The 2% increase as we understand will be implemented as follows. One percent raise to begin Dec. 1 1997 and an additional 1% effective Jan. 1 1998. These increases will raise Dr. Misner's percentage from 37 to 39 and Dr. Bybee's percentage from 31 to 33.

We welcome Bruce Call to the Idaho Dental Group and look forward to assisting him in any way that we can. Our goal is to have efficient and profitable practice that serves the needs of our patients. The changes that we discussed (Recall, reception duties, and inventory control) which will now be monitored by Bruce will allow us to spend more time treating patients and less time monitoring phone conversations.

Sincerely,



Dr. L.R. Misner
Dr. Larry W. Bybee

1-11-98 B

NON-COMPETE AGREEMENT

THIS NON-COMPETE AGREEMENT (this "Agreement") is made as of _____, 1996 by and between GMS DENTAL GROUP MANAGEMENT, INC., a Delaware corporation ("Company Sub"), and _____, DMD ("Member").

R E C I T A L S

A. Member is currently a member of Pocatello Dental Group P.L.L.C., an Idaho professional limited liability company ("Acquired Co").

B. Company Sub is a wholly-owned subsidiary of GMS Dental Group, Inc., a Delaware corporation (the "Company").

C. Member, together with his spouse, owns 14.285 percent of the issued and outstanding membership interests of Acquired Co.

D. The Company has entered into an Agreement and Plan of Reorganization dated as of _____, 1996 with Acquired Co, all of the members of Acquired Co and Idaho Dental Group, PA, an Idaho professional corporation ("Group") pursuant to which Acquired Co shall be merged (the "Merger") with and into Company (the "Merger Agreement"). A condition to the Company's obligation to effect the Merger is the execution by the Member of a non-compete agreement with Company Sub effective as of the consummation of the Merger (the "Effective Time").

E. Member and Group have entered into an employment agreement ("Employment Agreement") effective as of the Effective Time.

F. The parties desire to provide for the terms of the non-competition by Member with Company Sub (including all of its affiliates) after the Effective Time pursuant to the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties hereto agree as follows:

1. Term. Subject to and in consideration of the consummation of the Merger Agreement and the transactions contemplated thereby, Company Sub and Member hereby enter into this Agreement commencing at the Effective Time. The term of this Agreement shall be the greater of (a) ~~three~~ (35) years from the Effective Time, or (b) twothree (23) years from the date of termination of Member's employment with Group or non-renewal of employment at the expiration of the term of the Employment Agreement; provided, however, that if Group, with the consent of the Joint Operations Committee of Group, decides not to renew Member's employment at the expiration of the term of the

Employment Agreement and there otherwise would be no reason to terminate Member with cause (as described in the Employment Agreement), then this Agreement shall expire at the expiration of the term of the Employment Agreement; and provided, further, that if Group, with the consent of the Joint Operations Committee of Group, terminates the Member's employment with Group without cause (as described in the Employment Agreement), then this Agreement shall expire at the date of termination of Member's employment.

2. Agreement Not to Compete. The parties agree that Member has acquired during the course of Member's significant ownership interest of Acquired Co and shall acquire during the course of Member's continued employment with Group valuable trade secrets possessed by Acquired Co and Group. It is acknowledged and agreed that such trade secrets have been developed at great expense to Acquired Co, and the Company would not enter into the Merger Agreement unless the Company is assured that all such information will be used for the exclusive benefit of the Company, Company Sub and Acquired Co. In recognition thereof, the parties agree that during the course of Member's employment with Group and following termination of his employment with Group and for the term of this Agreement, Member shall not serve as an employee, independent contractor, consultant or otherwise, directly or indirectly, perform services for a person or entity or own or operate any entity engaged in the business of providing the professional services of dentistry, providing dental benefits or dental care or providing management services to businesses providing dental benefits or dental care (a "Dental Business"), within a twenty mile radius of the location of the facilities set forth on Schedule A hereto (the "Non-Compete Area"). For purposes of this Agreement, (a) passive ownership of less than 2% of the outstanding securities of a Dental Business and (b) teaching at a dental hygiene school shall not constitute a violation of this Agreement. It is agreed by the parties hereto that the restrictions set forth in this Section 2 are reasonable and necessary to protect the confidentiality of the trade secrets, and other confidential information concerning the Company, Company Sub and/or Acquired Co.

Member further agrees that during the term of this Agreement he shall not, directly or indirectly, (a) solicit in any way on behalf of himself or in conjunction with others any patient, client, provider or customer being or having been solicited by Company Sub, Acquired Co, Group or any subsidiary, affiliate or successor in interest to Company Sub, Acquired Co or Group for the purpose of providing dental benefits or dental care either directly or indirectly, (b) solicit in any way or make offers of employment to, on behalf of himself or in conjunction with others, any person employed by Company Sub, Acquired Co, Group or any subsidiary or affiliate of Company Sub, Acquired Co or Group.

In the event the provisions of this Section 2 should ever be adjudicated by a court of competent jurisdiction to exceed the time or geographic or other limitations permitted by applicable law, then such provisions shall be deemed reformed to the maximum

time or geographic or other limitations permitted by applicable law, as determined by such court in such action.

Member agrees that the remedy at law for any breach of such covenant or of the related covenants set forth herein would be inadequate, and that therefor the Company, Company Sub or any other person entitled to enforce such covenants shall be entitled to injunctive relief thereon in addition to its rights to monetary damages.

3. Proprietary Information.

(a) Member acknowledges that Company Sub retains the exclusive ownership of any proprietary information that was or will be obtained by Member from Company Sub, Acquired Co or Group during his employment with Group or other prior relationship with Company Sub, Acquired Co or Group. "Proprietary Information" includes all information and any idea which a reasonable person would believe is confidential, in whatever form, tangible or intangible, pertaining in any manner to the business of Company Sub, Acquired Co or any subsidiary or affiliate of Company Sub, Acquired Co or Group, unless (i) the information is or becomes publicly known through lawful means, (ii) the information was rightfully in Member's possession or part of his general knowledge prior to his tenure with Acquired Co or Group or (iii) the information is subsequently disclosed to Member by a third party without breach of this Agreement and without restriction on its use. Member agrees to hold all Proprietary Information in confidence and not to directly or indirectly disclose, use, copy, publish, summarize or remove from Group's premises any Proprietary Information, except (i) during the term of his employment with Group, to the extent necessary to carry out his responsibilities under the Employment Agreement or (ii) as specifically authorized in writing by Company Sub.

(b) All writing or works, including but not limited to training materials, practice guides, practice development aids, methodologies, books, marketing proposals and brochures, pamphlets, systems, computer programs, operation instructions, and all other documentation, techniques, or methods created or conceived by the Member during the term of the Employment Agreement and related to the specific performance of Member's duties to Group, Company Sub or any affiliate or subsidiary of either Group or Company Sub, and any and all intellectual property right therein, shall at all times become and remain the exclusive property of Company Sub, provided, however, that this Agreement does not require assignment of an invention which qualifies fully for protection under applicable state law in the state in which Member has his permanent residence. Member shall, upon request by Company Sub, execute any documents necessary to give effect to the terms of this Section 3.

(c) In the event of termination of Member's employment with Group for any reason, Member shall return, or cause to be returned, to Company Sub any and all of Company Sub's property,

including but not limited to the above-listed property and property which is in Member's control or possession at such time.

4. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, successors and permitted assigns.

5. Entire Agreement. This Agreement and the Employment Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and may be amended only by an agreement in writing signed by the party against whom enforcement of any amendment is sought.

6. Notices. All notices and demands provided for by this Agreement shall be in writing and (unless otherwise specifically provided herein) shall be deemed to have been given when mailed by first class mail enclosed in a registered or certified post-paid envelope addressed to the address of the parties written below or to such changed address as such party may have fixed by notice; provided, however, that any notice of change of address shall be effective only upon receipt.

7. Governing Law. This Agreement and its validity, construction and performance shall be governed in all respects by the internal laws of the State of Idaho without giving effect to principles of conflict of laws.

8. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day first above written.

GMS DENTAL GROUP MANAGEMENT, INC.

By: _____
Grant M. Sadler, President

Address: GMS Dental Group Management, Inc.
180 North Riverview Drive, Suite 255
Anaheim, Hills, CA 92808
Attn: Grant M. Sadler
Telephone: 714-998-0587

MEMBER

_____, DMD

Address: _____

Telephone: _____

